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THE PUBLIC FUNDRAISING APPEALS BILL, 2024

A Bill for

AN ACT of Parliament to provide a framework for the regulation in the conduct of public fundraising appeals; to promote transparency and accountability in the carrying out of fundraising appeals to foster greater philanthropy; to regulate the conduct of public officers in relation to public fundraising appeals; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I – PRELIMINARY

1. This Act may be cited as the Public Fundraising Appeals Act, 2024.

Short title.

2. In this Act unless the context otherwise requires —
“beneficiary”, in relation to a fundraising appeal, means —

Interpretation.

(a) any person, class of persons or cause listed as beneficiary by the person conducting the appeal when applying for registration; or

(b) any person who is acting on behalf of such a person, cause or class of persons referred to under paragraph (a);

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to planning and social development;

“county executive committee member” means the county executive committee member in each county for the time being responsible for matters relating to planning and social development;

“county register” means the register which a county executive committee member is required to keep under section 35;

“fundraising appeal” has the meaning assigned to it under section 9;

“fundraising manager” means a person who is licensed under section 21 to conduct a fundraising appeal and who has the managerial or financial responsibility in relation to the appeal; and

“national register” means the register kept and maintained by the Cabinet Secretary under section 27.

3. The objects and purposes of this Act are to —

Object and
purposes of the
Act.

- (a) provide a regulatory framework for —
 - (i) the structured conduct of fundraising appeals; and
 - (ii) ensuring transparency and accountability in the conduct of fundraising appeals;
- (b) protect the public from fraudulent, misleading and coercive fundraising appeals and provide a framework to ensure that the public has sufficient information to make informed decisions in making voluntary contributions in accordance with this Act;
- (c) establish a framework of standards for persons and entities involved in the conduct of fundraising appeals; and
- (d) provide a platform for the provision of fiscal incentives as a means of encouraging donations and voluntary contributions in relation to fundraising appeals.

PART II- REGULATION OF FUNDRAISING APPEALS

4. (1) The Cabinet Secretary shall oversee the implementation of this Act and shall, for this purpose —

Functions of the
Cabinet Secretary.

- (a) collaborate with county executive committee members in the performance of their functions under this Act;
- (b) oversee the conduct of public fundraising appeals national appeal or is publicly made to members of the public in more than one county;
- (c) receive, vet and process applications for the issuance of a permit to conduct a public fundraising appeal where such appeal is a national appeal or is publicly made to members of the public in more than one county;

- (d) investigate any complaints, misuse of funds raised through a fundraising appeal or any issue relating to the conduct of a fundraising appeals under this Act;
- (e) conduct inspections of records and audits relating to fundraising appeals conducted under this Act;
- (f) maintain a national register of persons licensed by it to conduct a public fundraising appeal under this Act;
- (g) establish mechanisms to enable the transparent conduct of fundraising appeals under this Act and accountability on the part of the persons conducting the appeals;
- (h) carry out sensitization and education awareness regarding the conduct of fundraising appeals;
- (i) promote the establishment of endowment funds and such other funds and investments that may provide sustained incomes for the benefit of the public;
- (j) monitor the implementation of, and enforce the provisions of, this Act; and
- (k) perform such other functions as may be necessary for the implementation of the provisions of this Act.

(2) The Cabinet Secretary shall have all the powers necessary for the proper discharge of its functions under this Act and without prejudice to the generality of the foregoing, shall have the power to —

- (a) require any information from any person conducting or intending to conduct a fundraising appeal under this Act;
- (b) require at any time, before the issuance of a permit and at any time after being issued with a permit, such information as it may consider necessary; and
- (c) monitor the compliance, by persons to whom a permit is issued under this Act, of the provisions of this Act.

(3) The Cabinet Secretary may, for the effective implementation of this Act, designate a public officer to

serve as a Registrar for the implementation of the functions under subsection (1).

5. The Cabinet Secretary shall not later than three months after the end of each financial year prepare and submit, for tabling before Parliament a report containing information including a comprehensive statement of the purpose of the appeals, the public funds raised and the monetary value of all the donations received by beneficiaries through fundraising appeals.

Reports of the
Cabinet Secretary.

6. (1) The county executive committee member in each county shall be responsible for the administration of this Act in the respective county.

Role of a county
executive
committee
member.

(2) Notwithstanding the generality of subsection (1), the county executive committee member shall –

- (a) receive, vet and process applications for the issuance of a permit to conduct a public fundraising appeal within the county;
- (b) regulate the conduct of public fundraising appeals within the county;
- (c) investigate any complaints, misuse of funds raised through a fundraising appeal or any issue relating to the conduct of a public fundraising appeal under this Act within the county;
- (d) carry out inspections of records and audits relating to a public fundraising appeal conducted under this Act;
- (e) maintain a register of all permits issued to a person conducting a public fundraising appeal under this Act;
- (f) monitor and evaluate the conduct of fundraising appeals within the county; and
- (g) perform such other functions as may be necessary for the implementation of this Act.

(3) The county executive committee member shall have all the powers necessary for the proper discharge of the functions under this Act and without prejudice to the generality of the foregoing, shall have the power to –

- (a) oversee the conduct of fundraising appeals carried out under this Act within the county;

- (b) require any information from any person conducting or intending to conduct a fundraising appeal under this Act;
- (c) require at any time, before the issuance of a permit and at any time after being issued with a permit such information as it may consider necessary; and
- (d) monitor the compliance, by persons licensed under this Act, of the provisions of this Act.

(4) The county executive committee member may designate such public officers as may be necessary for the performance of the functions under subsection (2).

7. The county executive committee member shall prepare an annual report on the activities relating to fundraising appeals conducted within the county and submit the report to the County Assembly.

Submission of report to County Assembly.

PART III—FUNDRAISING APPEALS

8. The provisions of this Part shall not apply to a private fundraising appeal where the solicitation is made from members of the beneficiary's nuclear family or relatives and does not extend to members of the public.

Non-application of Part to private fundraising appeals.

9. Fundraising appeals shall be classified as —

Classification of fundraising appeals.

- (a) public fundraising appeal which shall consist of solicitations made to members of the public or a section of the public for a public or private benefit; and
- (b) private fundraising appeal which shall consist of solicitations made by a person or class of persons on behalf of a person or class of persons to the members of the family of, or relatives of such person for the benefit of such person.

10. (1) A person conducts a fundraising appeal if the person solicits or receives money or a benefit on the basis of a representation that —

Conduct of fundraising appeal.

- (a) the soliciting or receiving of the money or benefit is not solely for the profit or commercial benefit of that person or any other person or cause on whose behalf the person is soliciting or receiving the money or benefit; or

(b) the money or benefit is to be utilised for public good.

(2) A person who solicits or receives money or a benefit under subsection (1) conducts a fundraising appeal whether or not—

- (a) such person made the representation;
- (b) the representation made under subsection (1) was direct or indirect;
- (c) the money or benefit, or such proportion of the money or benefit is applied for the benefit of the person or cause on whose behalf it is solicited or received;
- (d) such person solicits or receives the money or benefit as an ongoing activity or in relation to a particular period of time;
- (e) such person solicits or receives the money or benefit as a volunteer or is paid for doing so.

11. Despite the provisions of section 10, the following activities do not constitute a fundraising appeal for the purposes of this Act—

- (a) soliciting or receiving any money or benefit in relation to any raffle, lottery or other activity authorised or permitted under the Betting, Lotteries and Gaming Act or any other relevant law;
- (b) money or property collected by or under the authority of a recognized representative of a religious association registered under the Societies Act for normal collections such as tithes and offerings or the purpose of carrying out developments or projects for the benefit of the association;
- (c) soliciting a person to become a member of an organisation or to pay the joining or membership fee of an organisation;
- (d) the soliciting or receipt of any money or benefit by, or on behalf of, an organisation from a person—

Exemptions.

Cap. 131.

- (i) who is, or was, a member of the organisation; or
- (ii) who is in the process of becoming a member of the organisation; or
- (iii) who is a relative of, or who is personally acquainted with, any person referred to in subparagraph (i) or (ii)—

even if the money or benefit is solicited or received on the basis that it will be applied for purposes other than the benefit of the organisation;

- (e) soliciting or receiving money or a benefit exclusively or predominantly from among people sharing a common employer or principal or place of work if the soliciting or receiving —

- (i) is carried out by one of those people; and
- (ii) is made on the basis of a representation that the money or benefit will be applied for a benevolent or philanthropic purpose connected directly with another of those people or with the immediate family of another of those people;

- (f) soliciting or receiving money or a benefit—

- (i) from the National Government, a county government or a state agency;
- (ii) for or on behalf of a public benefits organisation registered under the Public Benefits Organisations Act, a corporation, partnership or trust that is permitted to donate money or benefits for non-profit or non-commercial purposes by its memorandum of incorporation, articles of association, partnership agreement, trust deed or other empowering document; and

- (g) any other activity that the Cabinet Secretary may prescribe.

12. (1) An individual person or a body corporate or an entity registered as a public collection entity under this Act may conduct a fundraising appeal under this Act.

Persons who may conduct a fundraising appeal.

(2) A public collection entity may, from time to time, conduct fund raising appeals for a public purpose or on behalf of beneficiaries under this Act and may, for that purpose, receive money on behalf a beneficiary or for an intended public purpose under this Act.

(3) A person may make an application to the Cabinet Secretary or the respective county executive committee member to be registered as a public collection entity for the purpose of conducting fundraising appeals within the county under this Act.

(4) The provisions of section 21 shall apply to the consideration of an application submitted to the county committee under subsection (3).

(5) The obligations imposed on a fundraising manager under this Act shall apply to a public collection entity registered under this Act.

(6) In this section, “public purpose” means —

- (a) the advancement of community welfare including the relief of those in need by reason of youth, age, ill-health, gender, disability or any other interest ;
- (b) the advancement of community development, including agriculture, water sanitation, rural or urban livelihoods and regeneration;
- (c) the promotion of health, including the prevention or relief of sickness, disease or human suffering;
- (d) the advancement of conflict resolution or reconciliation;
- (e) the integration of those who are marginalized, and the promotion of their full participation, in society;
- (f) the promotion of economic, environmental, social or cultural development;
- (g) the promotion of education
- (h) disaster prevention, preparedness and mitigation; and
- (i) advocating on issues of general public interest or the interest or well-being of the general public or a class of individuals or organizations.

(7) The Cabinet Secretary may, in consultation with the county executive committee members, make Regulations for the registration of public collection entities under this Act.

13. (1) A State officer or an appointed public officer shall not participate in a fundraising appeal or conduct a public fundraising appeal during his or her term as a State officer.

State officers are not to participate in or conduct a fundraising appeal.

(2) A person who intends to vie for a public office shall not participate in a public fundraising appeal within the period of three years preceding a general election.

(3) A person who contravenes the provisions of this section shall be liable to a fine not exceeding five million shillings.

(4) The conduct by a person under subsection (2) shall be deemed to constitute an election offence.

14. (1) A person shall not conduct a public fundraising appeal unless the person has applied for, and obtained, a permit in accordance with the provisions of this Act

Application for a permit.

(2) A person who intends to conduct a public fundraising appeal shall submit to the Cabinet Secretary or the respective county executive committee member, as the case may be, an application for a permit at least fourteen days before the date for the conduct of the fundraising appeal.

(3) An application under subsection (2) shall be in such form as the Cabinet Secretary shall prescribe and shall be submitted together with the following information —

- (a) the full names and address of the person intending to conduct the fundraising appeal;
- (b) the purpose of the fundraising appeal;
- (c) the necessity of conducting the fundraising appeal;
- (d) the date on which the fundraising is to be conducted;
- (e) the names and contact details of the persons assisting in conducting the appeal;
- (f) the amount intended to be raised through the appeal;

- (g) the estimated expenses to be incurred in conducting the fundraising appeal;
 - (h) a statement regarding whether any monies have been received with respect to the matter pertaining to the fundraising appeal from any person prior to the date of the proposed fundraising appeal;
 - (i) the place at which the collection is intended to be made;
 - (j) the expected timeframe for the appeal; and
 - (j) such other information as may be necessary.
- (4) Where an applicant for a permit under subsection (2) is not the intended beneficiary of the fundraising appeal, the application shall be submitted together with —
- (a) the name of every person on whose behalf the person intends to conduct a fundraising appeal;
 - (b) the common features shared by the class of persons for whose benefit the person intends to conduct a fundraising appeal, and the means by which the money or benefit is to be transmitted to that class or is to be distributed among the individual members of that class;
 - (c) if any intended appeal is not to be conducted for the immediate direct benefit of one or more people, a description of the cause for which the appeal is to be conducted, and the means by which the money or benefit will be applied to the cause;
 - (d) in the case of —
 - (i) an adult who is the intended beneficiary, the consent of such adult;
 - (ii) an adult who is the intended beneficiary but who lacks legal capacity to consent, the consent of a legally appointment guardian; or
 - (iii) a child who is the intended beneficiary, the consent of the parents or guardian of the child;
 - (e) a declaration that the intended fundraising appeal does not violate the provisions of the Public Officer Ethics Act, the Elections Act or the provisions of any other written law.

Cap. 183.

No. 24 of 2011.

(5) Where the intended beneficiary of a fundraising appeal is an organisation or the members of such organisation, an application for a permit under subsection (2) shall be submitted together with the consent of a duly authorised representative of the organisation.

15. (1) The Cabinet Secretary or respective county executive committee member may dispense with the period specified under section 16(2) where they are satisfied that special circumstances exist to warrant the exemption.

Urgent applications.

(2) An application submitted under subsection (1) shall contain a statement specifying the special circumstances warranting the application.

(3) The Cabinet Secretary or county executive committee member shall consider the application and may, in granting a permit, impose such conditions as the committee considers appropriate.

16. (1) The Cabinet Secretary or county executive committee member shall, within ten days upon receipt of an application under section 16—

Consideration of application.

(a) examine the documents submitted to it; and

(b) if it considers it necessary, call for such further information or consent or carry out such a query as it may consider necessary for the determination of the application.

17. (1) A Cabinet Secretary, county executive committee member or public officer shall not solicit or receive any inducement to process an application made under this Act or receive or not receive any gift or favour from a person in respect of whom a permit is considered.

Prohibition of bribes, gifts and other inducements.

(2) A person who solicits, receives or offers a bribe or any other inducement under subsection (1) for purposes of having an application considered positively commits an offence.

18. (1) The Cabinet Secretary or county executive committee member may require a person to submit, together with an application for a permit, any consent required by another person or body to enable the Cabinet Secretary or county executive committee member to obtain from that other person or body information to check or confirm any information set out in the application.

Requirement for consent.

(2) A reference in this Part to seeking further information in relation to an application includes a reference to requiring the provision of any consent referred to in subsection (1).

19. Where the Cabinet Secretary or county executive committee member is satisfied that the applicant meets the requirements for the issuance of a permit, the committee may, subject to the provisions of this Act, —

Issuance of a permit.

- (a) issue to the applicant, a permit under this Act within ten days of receipt of the application; and
- (b) enter the name of the applicant, the beneficiary and such other particulars in relation to the fundraising appeal as it may consider necessary in the register of fundraising appeals kept for that purpose.

20. (1) The Cabinet Secretary or county executive committee member shall issue to an applicant one permit in relation to the conduct of each fundraising appeal under this Act.

Duration of permit.

(2) A permit issued under subsection (1) shall, unless otherwise specified by the Cabinet Secretary or county executive committee member, automatically expire upon the conduct of the fundraising appeal to which the permit issued relates.

(3) Notwithstanding subsection (2) the expiry of the permit shall not relieve the person from the obligations imposed under this Act.

21. (1) The Cabinet Secretary or county executive committee member may refuse to issue to an applicant, a permit to conduct a fundraising appeal where —

Refusal to issue a permit.

- (a) the application for a permit does not comply with this Act;
- (b) the applicant —
 - (i) is an undischarged bankrupt;
 - (ii) has been found guilty of an offence under this Act;
- (c) the application for a permit contains false or misleading information;

- (d) there are significant omissions in the application for a permit or the application is incomplete in a significant way;
- (e) the consent of a beneficiary of an intended appeal has not been supplied;
- (f) in the case of an intended appeal on behalf of a class of beneficiaries, the description of the class is too vague, or the class is insufficiently identified; or
- (g) the purpose for which the fundraising appeal is to be conducted is unlawful or incompatible with public interest.

(2) The Cabinet Secretary or county executive committee member may refuse to issue a permit to a person as a fundraising manager if any person named in the application as a fundraising manager is not, in their opinion, a fit and proper person to be associated with a fundraising appeal.

(3) In the case of a refusal, the Cabinet Secretary or county executive committee member shall notify the applicant in writing of the refusal within three days of the decision.

(4) The Cabinet Secretary or county executive committee member shall, where he or she refuses to issue a permit to a person, specify the reasons for such refusal in the notification issued to the applicant under subsection (3).

22. (1) The relevant Cabinet Secretary or county executive committee member may, in issuing a permit to an applicant under section 19 impose such conditions on the applicant in relation to the conduct of the fundraising appeal.

Conditions of
issuance of a
permit.

(2) The Cabinet Secretary or county executive committee member may, from time to time, issue guidelines relating to the imposition of conditions under subsection (1).

23. The Cabinet Secretary or county executive committee member may, subject to the provisions of section 24, cancel a permit issued under this Act where —

Grounds for
cancellation of a
permit.

- (a) it has reasonable cause to believe that the fundraising appeal is likely to be pursuing an unlawful cause or purpose prejudicial to the peace, welfare or good order of the public;
- (b) the person conducting the fundraising appeal fails to comply with the provisions of this Act;
- (c) the person to submit any additional information that the Cabinet Secretary or county executive committee member may require under this Act to ensure compliance with this Act;
- (d) the Cabinet Secretary or county executive committee member determines that the person submitted false information or statements at the time of application for a permit; or
- (e) the Cabinet Secretary or county executive committee member determines that the permit was obtained fraudulently or through a misrepresentation of facts.

24. (1) The Cabinet Secretary or county executive committee member shall, before cancelling the permit under section 23 issue to the person, a compliance notice in the prescribed form.

Notice of non-compliance.

(2) A compliance notice specified under subsection (1) shall—

- (a) be in writing;
- (b) notify the licensed person of the noncompliance and the steps it is required to take in order to comply; and
- (c) inform the person of the time period within which it is required to comply with the notice.

(3) The Cabinet Secretary or county executive committee member may, upon request by the person under subsection (1) and where there are sufficient grounds shown by the person, extend the period of compliance for such period as it may consider necessary to ensure compliance.

25. (1) Where a person receives a notice under section 24 and fails to comply with such notice, the Cabinet Secretary or county executive committee member shall —

Cancellation of a permit.

- (a) cancel the permit;
- (b) notify the person in writing of —
 - (i) the cancellation and the reasons for it; and
 - (ii) the date on which the permit was cancelled; and
- (c) amend the register accordingly.

(2) For purposes of this Act, a cancellation of a permit takes effect on the date on which the permit is cancelled by the Cabinet Secretary or county executive committee member.

26. Where the Cabinet Secretary or county executive committee member cancels the permit of a person, such person —

Duties of a fundraiser on cancellation.

- (a) shall stop any fundraising activities that the person was undertaking immediately before the revocation took effect;
- (b) Cabinet Secretary or county executive committee member, pay out, or otherwise distribute or deal with, any asset obtained as a result of any fundraising appeal that the person conducted while registered as a fundraiser;
- (c) shall submit to the Cabinet Secretary or county executive committee member as the case may be, an inventory of the assets of any fundraising appeal being conducted by the person within seven working days of the revocation; and
- (d) subject to paragraph (c), shall ensure that any assets obtained as a result of the appeal are distributed as soon as is practicable to the intended beneficiaries of the appeal.

27. (1) The Cabinet Secretary or county executive committee member shall keep and maintain a register of —

Register of permitted fundraising appeals.

- (a) all persons to whom permits have been issued to conduct a fundraising appeal in the county;
- (b) all persons whose permit has been cancelled; and
- (c) such other particulars as may from time to time be considered necessary.

(2) Any person may inspect the register and obtain a copy of, or an extract from the Cabinet Secretary or county

executive committee member upon payment of such administrative fee to meet the cost of availing that information to the applicant as the Cabinet Secretary or county executive committee member shall determine.

28. (1) Each Cabinet Secretary or county executive committee member shall ensure that the integrity of the register under its custody is maintained at all times.

Alteration of register.

(2) A person who falsifies an entry in a register or wrongfully alters an entry in the register commits an offence.

29. If an application made under section 16 or pursuant to section 20 contains any matter which is false in any material fact known to any person signing it, that person commits an offence.

False statements.

30. (1) A person who conducts a public fundraising appeal shall keep accurate records of the funds or benefits received.

Receipts.

(2) A person conducting a fundraising appeal shall, upon request, give a receipt to a person making a monetary contribution.

(3) A receipt issued under subsection (1) shall be in such form and contain such information as the Cabinet Secretary shall prescribe.

31. Not more than five per cent of the targeted amount to be raised shall be utilized in defraying administrative expenses related to the fundraising appeal.

Maximum expenditure

PART IV — RECORDS AND ACCOUNTS OF A FUNDRAISING APPEAL

32. (1) Every person who conducts a fundraising appeal shall keep a record reflecting the income and expenditure relating to the appeal including —

Financial records of a fundraising appeal.

- (a) details of the persons who make contributions in relation to the fundraising appeal and the amounts contributed by each person;
- (b) the name, number and address of the bank into which the monies raised in relation to the fundraising appeal were deposited;
- (c) full details of all funds and assets received as a result of the appeal;

- (d) full details of the use to which the funds and assets received were put to;
- (e) full details of—
 - (i) the amount applied to the purposes or objects of the appeal and how it was distributed;
 - (ii) any expenditure on assets;
 - (iii) any expenditure on wages, salaries, commissions and other remuneration in relation to the appeal;
 - (iv) any other administrative expenses related to the appeal;
 - (v) any other expenditure related to the appeal; and
 - (vi) such other information as the Cabinet Secretary or county executive committee member may determine.

(2) The person conducting an appeal shall ensure that the records are kept in a way that enables them to be conveniently and properly audited.

(3) The person conducting the appeal shall ensure that accounts containing a summary of the records required by subsections (1) are finalised within three months of—

- (a) the date the appeal ends, if the appeal runs for six months or less; or
- (b) after every six months if the appeal runs for more than six months.

(4) For the purposes of this section, an appeal ends on the occurrence of the first of these events—

- (a) if the appeal is being conducted by a person whose permit has been cancelled, on the date of the cancellation of the permit;
- (b) in any other case, one month after the last significant solicitation for money or a benefit is made in relation to the appeal.

(5) Records relating to any proceeds received after the date an appeal ends but before the accounts for the last period of the appeal are finalised shall be included in those accounts.

(6) If the person who conducted an appeal continues to administer any funds or assets received as a result of an appeal after the appeal ends, the person shall ensure that accounts containing a summary of the records required under subsections (1) and (2) are finalised within one month of the receipt of the funds.

(7) A person to whom subsection (6) applies shall ensure that accounts containing a summary of the records required by subsections (1) and (2) are finalised within two months of the date the last of the funds or assets ceased to be administered by the person.

(8) A person who fails to comply with the provisions of this section commits an offence.

33. A fundraising manager shall keep the following records—

Other records relating to a fundraising appeal.

- (a) the name and address of each person who participates in the appeal as an assistant to the fundraising manager;
- (b) the name and address of each person who gained a financial advantage from the appeal, other than as a person for whose benefit the appeal was held or other than as a supplier of goods or services, and details of the reason for, and nature and amount of, that financial advantage;
- (c) the—
 - (i) name and address of every person; or
 - (ii) name or description of every class of people on whose behalf the appeal was made;
- (d) copies of the consents required under this Act, where applicable;
- (e) the dates on which the appeal started and finished;
- (f) any other records that may be specified by the Cabinet Secretary or county executive committee member.

Storage of records.

34. (1) A fundraising manager shall ensure that any records or accounts that the person is required to keep under this Part are stored at all times at the address or the registered office or principal place of business of the person or of the designated person.

(2) A person under section (1) shall keep and maintain the records or accounts of a fundraising appeal for a period of at least three years after the date the appeal ends.

(3) A fundraising manager who fails to keep proper records in accordance with this section commits an offence.

35. (1) Every fundraising manager shall submit to the Cabinet Secretary or the respective county executive committee member a summary of the records pertaining to the fundraising appeal conducted by him or her and prepared under section 37 and the records kept by him or her under section 38 within thirty days from the date of the conduct of the appeal.

Duty to provide reports and information.

(2) Notwithstanding subsection (1), the Cabinet Secretary or the respective county executive committee member may require a fundraising manager to submit to it, such other information, record or document that it may require in order to enable the determination on whether the person has complied with the provisions of this Act.

(3) A person under subsection (2) shall submit the information or document required by the Cabinet Secretary or county executive committee member under subsection (2) within a period of seven days of such request.

(4) A person who fails to submit the records under subsection (1) or fails to comply with a request under subsection (2) commits an offence.

36. A person who –

Declaration of source of contribution.

- (a) who makes a contribution to a fundraising appeal shall specify the source of the contribution; and
- (b) receives funds as a beneficiary or for the benefit of a beneficiary who is a child pursuant to a fundraising appeal shall declare such contribution in the income tax returns submitted by such person pursuant to the Income Tax Act.

37. (1) The Cabinet Secretary or a county executive committee member may designate such public officers as inspectors for conduct an inspection in relation to fundraising appeal where necessary to ensure the effective implementation of this Act.

Inspectors.

(2) The Auditor General may carry out an inspection of the books and accounts in relation to a fundraising appeal carried out under this Act.

38. (1) An inspector may, at any reasonable time, enter and inspect the premises of a fundraising manager to ensure compliance with this Act.

(2) An inspection under subsection (1) shall not be conducted unless the inspector has, with the approval of the Cabinet Secretary or county executive committee member, issued to the fundraising manager, a notice of at least seven days prior to the carrying out of the inspection.

(3) An inspector may, in conducting an inspection under subsection (1) —

- (a) enter and inspect any books, records or documents required to be kept under this Act or relating to a fundraising appeal, expenditure or distribution of contributions;
- (b) inspect, photocopy, print out, or copy onto disk any documents, whether held in electronic or paper form; or
- (c) remove any document specified in paragraph (b), whether in its original form or as an electronic or paper copy.

(4) Where any original documents are removed from the premises of a fundraising manager under subsection (2)(c), the inspector who removes the documents shall —

- (a) leave at the entity or premises of the fundraiser, a list of the documents removed; and
- (b) return the documents, or a copy of them, to the centre as soon as practicable unless to do so would prejudice any investigation being or to be carried out by the Cabinet Secretary or county executive committee member.

(5) Every inspector exercising any power under this section shall, at the time of inspection, possess the appropriate written authorisation, and evidence of identity, and shall produce them to the person in charge of the premises concerned or, as the case may be, the person having possession or control of the books, records, or accounts concerned —

- (a) on first entering the premises; and

- (b) whenever subsequently reasonably required to do so by the person in charge.

(6) A person who obstructs an inspector in the conduct of an inspection commits an offence.

39. (1) A person who, in conducting or participating in a fundraising appeal, makes a false representation to the members of the public in soliciting for funds or makes a false statement to another person that misleads or deceives, or that is likely to mislead or deceive—

False information in conducting a fundraising appeal.

- (a) the other person; or
- (b) anyone else to whom the other person may make, repeat or give the representation or oral or written statement,

commits an offence.

(2) It shall be a defence for a person under subsection (1) to show —

- (a) that they reasonably believed that the representation or statement was not misleading or deceptive, and was not likely to mislead or deceive; or
- (b) that the statement was an accurate repetition of information supplied by another person, and that the person repeating or passing on the statement had no reasonable grounds to doubt that the information was true.

(3) Despite the provision of subsection (2) above, the person shall be required to surrender to the county executive committee member any collections or donation received in the course of the fundraising activity.

40. A person who applies the funds received pursuant to a fundraising appeal for a purpose other than which for which the appeal was held commits an offence.

Misappropriation of funds.

PART V - MISCELLANEOUS PROVISIONS

41. (1) The Cabinet Secretary shall, in accordance with the appropriate law, and in consultation with the Cabinet Secretary responsible for finance, grant to persons who make voluntary contributions pursuant to a fundraising appeal, such fiscal incentives on their contributions, as shall

Fiscal incentives.

be considered necessary for the advancement of voluntary contributions in the Republic.

(2) The Cabinet Secretary shall operationalize subsection (1) within sixty days of commencement of this Act.

42. The county executive committee member shall decentralise their services to the wards and village units established in accordance with section 48 of the County Governments Act.

Decentralisation
of services.

No. 17 of 2012.

43. A person who commits an offence under this Act for which no penalty is prescribed shall be liable, on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding three years or both.

General penalty.

44. (1) The Cabinet Secretary may, in consultation with the county executive committee members, make regulations generally for the better carrying out of the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may in consultation with the county executive committee members make regulations —

- (a) for the issuance of permits under this Act;
- (b) for adequate monitoring mechanisms to ensure transparency and accountability under this Act;
- (c) in consultation with the Cabinet Secretary responsible for finance, financial incentives in relation to activities and funds raised for a public purpose, from tax liabilities under this Act;
- (d) for the conduct of sensitization programmes and the publication and dissemination of information under this Act; and
- (e) for charges and fees to be paid to the relevant committee under this Act.

Cap. 2.

No. 23 of 2013.

(3) For the purposes of Article 94(6) of the Constitution—

- (a) the authority of the Cabinet Secretary to make regulations shall be limited to the implementation of the provisions of this Act and the fulfilment of the objectives specified under subsection (1); and

- (b) the principles and standards set out under the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013 in relation to subsidiary legislation shall apply to regulations made under this Act.

45. Where a period for performance of any action has been prescribed in this Act, a person may apply to the relevant committee, in the prescribed format, for extension of the timeline.

Extension of time.

46. The Public Collections Act is repealed.

Repeal of Cap. 106.

47. All directions, certificates of authority orders and approvals issued under the Public Collections Act and subsisting or valid immediately before the commencement of this Act, shall be deemed to have been given, issued or made under this Act.

Transitional provisions.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to provide for the establishment of regulatory mechanisms at the national and county levels which oversee the conduct of fundraising appeals, to provide for the licensing and regulation of fundraisers; the promotion of transparency and accountability in the conduct of fundraising appeals and also the regulation of the conduct by State and public officers in the participation in public fundraising appeals and in the administration of this legislation.

The Bill is developed against the need to maintain the altruistic rationale that public appeals (*Harambees*) serve in the Kenyan society while addressing the shortcomings that have accompanied this process.

The Bill seeks to replace the *Public Collections Act, Chapter 106, Laws of Kenya*, whose institutional architecture does not align with the devolved structures of the Kenyan constitution and is not sufficiently robust to address corruption tendencies associated with public fundraising appeals. Further, the Public collections Act excludes from its purview, charitable and religious purposes yet this forms a large component of harambees.

The Bill is also based on the need to reduce the culture of dependency that harambees have imbued in society, extending even essentially private affairs to the larger public. The Bill seeks to restrict its application to private fundraising appeals except where such appeals fall within public appeals for public purposes. Its passage will promote the use of devolved structures as entities for promoting structured social development by ensuring that the conduct of public appeals are approved by assessing their links to the needs and priorities of the counties and their decentralized structures.

To support voluntary contributions, it is imperative that the state grants incentives to such givers. The current regulatory regimes are limited in their financial incentives and essentially excludes private individuals. This Bill will provide frameworks within which financial incentives can be issued to voluntary contributions.

The Bill-

- (a) confers functions on the relevant Cabinet Secretary and the respective county executive committee members functions in relation to the issuance of permits, regulates and monitors the conduct of fundraising appeals and establishes mechanisms for the promotion of transparency and accountability in the conduct

of fundraising appeals at the National and county levels of government;

- (b) defines fundraising appeals, indicates who can undertake a fundraising appeal and lays out procedures for applying for permits, conditions to be fulfilled and consequences of not following these conditions;
- (c) defines and excludes private fundraising appeals from its provisions;
- (d) imposes obligations on State and public officers by limiting their participation in public fundraising appeals; and
- (e) stipulates records and accounts of fundraising appeals that must be retained.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does delegates legislative powers only to the extent of giving effect to the provisions of the Bill it does not limit fundamental rights and freedoms.

Statement of how the Bill concerns county governments

The Bill makes provision for regulation of fundraising appeals at the national and county levels of Government. The Bill therefore concerns county governments in terms of Article 110(a) of the Constitution as it affects the functions and powers of County Governments set out in the Fourth Schedule.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution.

The Bill is not a money bill within the meaning of Article 114 of the Constitution.

Dated 10th July, 2024.

AARON CHERUIYOT,
Senate Majority Leader.